UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

STATEN ISLAND UNIVERSITY HOSPITAL

Employer

and Case No. 29-RD-953

JUAN COLON, AN INDIVIDUAL

Petitioner

and

PAINTERS UNION LOCAL 1456, INTERNATIONAL BROTHERHOOD OF PAINTERS, AFL-CIO

Union

and

LOCAL 94-94A-94B, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO.

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Haydee Rosario, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. Juan Colon, herein called the Petitioner, Painters Union Local 1456, International Brotherhood of Painters, AFL-CIO, herein called the Union, and Local 94-94A-94B, International Union of Operating Engineers, AFL-CIO, herein called the Intervenor,[1] stipulated that the Staten Island University Hospital, herein called the Employer, with facilities in Staten Island, New York, has been engaged in the business of operating a multi-site acute care hospital, and that during the 12-month period prior to the hearing, the Employer, in conducting its business, purchased and received at its Staten Island facilities, products, goods, and materials valued in excess of $50,000, directly from points outside the state of New York.[2]

Based upon the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner, the Union, and the Intervenor stipulated that the Union and the Intervenor are organizations in which employees participate and which exist in whole or in part for the purpose of dealing with employers concerning wages, hours, and other terms and conditions of employment, and therefore they are labor organizations within the meaning of Section 2(5) of the Act. In addition, the Intervenor took the position that the Building and Construction Trades Council of Greater New York, AFL-CIO, herein called the Council, is a labor organization.[3]

Based upon the stipulations of the parties, and the record as a whole, I find that the Union, the Intervenor, and the Council are labor organizations within the meaning of the Act. The labor organizations involved herein claim to represent certain employees of the Employer.

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[1] The Employer did not appear at the hearing.
[2] The stipulation was based on the jurisdictional finding in *Staten Island University Hospital*, 320 NLRB 940 (1996).
[3] The Board has found the Council to be "a labor organization consisting of delegates from the local unions of the building trades in the area." *Local 3, International Brotherhood of Electrical Workers*, 130 NLRB 1458 (1961).

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner, Juan Colon, is seeking a decertification election in a unit consisting of the three maintenance mechanics at the Employer's 375 Sequine Avenue, Staten Island, New York, location who are members of the Union.[4] The Union appears to be taking the position that the decertification election should be held in a broader unit consisting of all employees covered by the collective bargaining agreement between the Employer and the Council.[5] At the close of the hearing, the Petitioner indicated that he would be willing to go forward in a broader unit if found appropriate by the Board.

The Petitioner, who has been employed as a maintenance mechanic for ten years, was called as a witness by the Hearing Officer. Michael Gadaleta, a business agent who represented the Intervenor at the hearing, was called as a witness by the Union. In addition, the Union offered into evidence a copy of the relevant collective bargaining agreement, consisting of three documents. The first is a 30-page contract between the Employer and the Maintenance Division of the Council, effective July 1, 1990, through June 30, 1993, executed by representatives of the Employer, the Council, the Intervenor and the Union. The other documents are one- and two-page renewal agreements effective

[4] Colon testified that an additional three maintenance mechanics at the same location are members of the Intervenor.

[5] The Union's attorney, Howard Wien, Esq., stated that the Union "disclaims any interest in this bargaining unit for so long as the [Council] is either (A) recognized by the Employer, or decertified by the [Board]…We don't want to be a part of this petition. We don't want to be on an election ballot. It is our position that the only appropriate union and the only union that seeks to represent these employees is the [Council]." It is not clear from this statement whether the Union is seeking to preserve the status quo, including the joint representation of the contractual unit by the Council, the Union, and the Intervenor, and the requirement that three of the maintenance mechanics remain members of the Union.

June 30, 1994, through June 30, 1996, and July 1, 1998, through June 30, 2001,[6] executed by the same parties. (The Intervenor and Union appear to have signed these documents both as representatives of their individual unions, and as delegates to the Council).

Article I of the 1990 collective bargaining agreement, entitled "Recognition," defines the contractual bargaining unit as consisting of "all engineers, electricians, carpenters, painters, gardeners, handymen, general maintenance men, helpers in any of the above classifications and employees performing any combination of these functions regularly assigned to work at the South site,[7] 375 Seguine Avenue, [Staten Island, New York], but excluding all other Hospital personnel…supervisory, confidential, executive and managerial employees, physicians, dentists, registered nurses, students whose performance of work at the Employer is part of their educational course of study, part time employees who are regularly scheduled to work a total of less than one half (1/2) of the regular full time work week for the job classifications in which they work and temporary employees," defined as "those who shall be of a limited duration not to exceed sixty (60) calendar days." Article X, "Wages," sets forth the following "presently existing job classifications" within the bargaining unit: senior engineer, stationary engineer (1 license), stationary engineer (2 licenses), master mechanic, senior mechanic, maintenance mechanic, general maintenance worker and groundskeeper.

According to the Petitioner, there are currently no painters, handymen,

[6] There is no evidence with regard to any additional agreements which may have been in effect between July 1 and June 30, 1993-94 and 1996-98.

[7] The Employer's North Site and South Site, which are approximately eight miles apart, were separate hospitals prior to 1987. *Staten Island University Hospital*, 24 F.3d 450, 452 (1994). The instant petition only concerns the Employer's South Site at 375 Seguine Avenue.

helpers, general mechanics or groundskeepers employed in his department at the 375 Seguine Avenue facility, although one of the maintenance mechanics, Louis Rosa, also does "grounds work." Sometime during Colon's ten years of employment, however, the additional classification of lead mechanic was added to those covered by the contract. Colon testified that the lead mechanics perform the same tasks as all the other mechanics, such as plumbing and electrical work. In addition, they receive work orders from the mechanics' supervisor, and convey them to the other mechanics. It appears from the record that they do not have the authority to hire and fire other employees. None of the parties has alleged that the lead mechanics are supervisors.

The Petitioner stated that the employees in the contractual bargaining unit are all in the Plant Operations Department,[8] and the employees in the Plant Operations Department (minus the department secretary) are all in the contractual bargaining unit. He estimated that 20 to 22 employees, including senior engineers, stationary engineers, lead mechanics, master mechanics, a senior mechanic, maintenance mechanics, and the maintenance mechanic/groundskeeper, are covered by the contract's terms. Colon is one of a total of six maintenance mechanics, of whom three (including Colon) are members of the Union and three are members of the Intervenor. The remaining employees in the Plant Operations Department (other than the secretary) are members of the Intervenor, including all other mechanics and all engineers. This apportionment of employees between the two unions has been in effect for at least the ten years that the Petitioner has been employed by the Employer. During that same time period, the Plant Operations Department has always been one department, and has never merged with any other departments.

[8] Colon also referred to his department as the engineering department.

Michael Gadaleta testified that the Union, the Intervenor, and a number of other local unions are affiliated with the Council. In general, multi-union contracts with employers are negotiated by representatives of the Council, who are also acting on behalf of their respective local unions in the course of the negotiations. The local unions, such as the Union and Intervenor, are in charge of servicing the members, acting alone with respect to grievances filed by individual members, and acting jointly with respect to group grievances. Colon's testimony confirmed that a grievance filed on behalf of the entire contractual unit had been handled by both the Union and the Intervenor. With respect to dues check-off, the Union's counsel stated that the Employer remits dues payments to the Council, which in turn remits the dues payments to the Union and the Intervenor. According to Gadaleta, the above arrangement has led to an absence of strikes, work stoppages, or "time periods when the employees were working without a contract."

It is well established that, with very few exceptions, the bargaining unit in which a decertification election is conducted must be coextensive with the recognized or certified unit.[9] *Arrow Uniform Rental*, 300 NLRB 246, 247 (1990); *Mo's West*, 283 NLRB 130 (1987). Accordingly, craft severance is inappropriate in decertification cases. *Campbell Soup Company*, 111 NLRB 234, 235 (1955).[10] Bargaining history is a crucial factor in determining the appropriate unit. For example, in a decertification case where multiple bargaining units were separately certified or recognized, the Board may

[9] In certification elections as well, the Board normally will not disturb a historical unit "absent compelling circumstances." *Met Electrical Testing Company, Inc*., 331 NLRB No. 106 (2000).

[10] When determining whether craft severance is appropriate in certification cases, the Board inquires into such issues as whether the proposed unit consists of a "functionally distinct department," or "whether the existing patterns of bargaining are productive of stability in labor relations." *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966). A certification petition setting forth a unit of three maintenance mechanics, and excluding all other mechanics within the same department, is unlikely to meet these criteria.

nevertheless find a combined unit to be appropriate if the bargaining history shows that the separate units were merged. *Green-Wood Cemetery,* 280 NLRB 1359, 1360 (1986).

If an employer enters into a single collective bargaining agreement covering members of multiple unions, as in the instant case, there are a number of criteria for determining whether the appropriate unit for decertification purposes is a single unit consisting of all the employees covered by the agreement. The Board is more likely to find a single, merged unit where there are joint bargaining sessions, uniform contractual provisions, a merged contractual recognition clause, the delegation of bargaining powers to a centralized Council or other entity, plant-wide contract ratification votes, and a longstanding history of joint bargaining. *See Duke Power Company*, 191 NLRB 308 (1971); *see also The Langenau Manufacturing Company,* 115 NLRB 971 (1956). By contrast, in *Duval Corporation*, 234 NLRB 160, 161 (1978), the Board found a separate warehouse department unit to be appropriate even though the employer had entered into a single labor agreement with four unions representing six departments. The Board found a lack of intent to merge the six departments into one unit, based on the contractual recognition clause, which referred to the separate certifications of the four unions to represent each separate department. In addition, there were contractual provisions establishing separate departmental shop stewards and separate departmental wage scales, combined with a lack of interchange with other departments. *Duval*, 234 NLRB at 161. Similarly, in *Wyandotte Chemicals Corporation*, 116 NLRB 972 (1956), despite a single production and maintenance unit contract, negotiated by the employer with two unions, the Board directed a decertification election in a smaller warehouse and shipping unit. As in *Duval*, the contractual production and maintenance unit really consisted of multiple

separate bargaining units which had been certified separately by the Board. Moreover, the joint agreement provided for separate units for seniority purposes, and the union shop clause referred to the separate interests of each union. Each union discussed contract proposals separately with its members, and sometimes submitted separate proposals.

The instant case is distinguishable from *Duval* and *Wyandotte*, and is more comparable to *Duke Power* and *Langenau*. The unit of three maintenance mechanics sought by Petitioner has never been recognized or certified as a separate bargaining unit. The relevant contractual recognition clause sets forth a combined unit, with the Council as its bargaining representative, and does not distinguish between members of the Union and members of the Intervenor. Most of the contractual provisions apply to members of both unions. In addition, there is evidence that the Union and Intervenor jointly process group grievances on behalf of the members of both unions.

Accordingly, I find the following existing contractual bargaining unit to be appropriate for the purposes of collective bargaining:[11]

> All full-time and regular part-time senior engineers, stationary engineers, other engineers, lead mechanics, master mechanics, senior mechanics, maintenance mechanics, general mechanics, general maintenance workers, electricians, carpenters, painters, gardeners, handymen, groundskeepers, helpers in any of the above classifications and employees performing any combination of these functions regularly assigned to work at the Employer's 375 Seguine Avenue, Staten Island, New York, facility, *excluding* all confidential, executive and managerial employees, office clerical employees, supervisors, and guards within the meaning of the Act, students whose performance of work at the Employer is part of their educational course of study, part-time employees who are regularly scheduled to work a total of less than one half (1/2) of the regular full-time work week for the job classifications in which they work, and temporary employees.

Additionally, although the Union contends that the Council is the only bargaining representative for the unit, it appears that the Union and Intervenor process grievances,

receive dues from unit employees, send representatives to contract negotiation meetings, and sign collective bargaining agreements with the Employer on behalf of their respective unions. Accordingly, I find that the Council, the Intervenor, and the Union to be the joint bargaining representatives of the existing unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by the single joint

[11] Since the appropriate unit is larger than the unit sought, the Petitioner will be permitted ten days to submit an additional showing of interest sufficient for the continued processing of the petition.

bargaining representative, the Building and Construction Trades Council of Greater New York, Painters Union Local 1456, International Brotherhood of Painters, AFL-CIO, and Local 94-94A-94B, International Union of Operating Engineers, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before May 17, 2001. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of

the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by May 24, 2001.

Dated at Brooklyn, New York, May 10, 2001.

/S/ ALVIN BLYER

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